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HUMAN RIGHTS QUESTIONS: IMPLEMENTATION OF HUMAN RIGHTS INSTRUMENTS; HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS; COMPREHENSIVE IMPLEMENTATION OF AND FOLLOW-UP TO THE VIENNA DECLARATION AND PROGRAMME OF ACTION

Letter dated 10 October 1994 from the Permanent Representative of Greece addressed to the Secretary-General

Following our previous correspondence on this issue, I have the honour to attach herewith the full text of the report of Professor Andrzey Rzeplinski, representative of the Office of Democratic Institutions and Human Rights of the Conference on Security and Cooperation in Europe (CSCE/ODIHR), who attended, as observer, the recent trial of five members of the Greek minority in Albania.

Professor Rzeplinski's report, entitled "Report on the CSCE/ODIHR trial observation in Tirana, Albania" and dated 6 September 1994, has been already circulated by the Greek delegation in the context of the Conference on Security and Cooperation in Europe and, as you will notice, proves, beyond any doubt, that the Albanian Government staged a trial well below the level of internationally recognized principles and standards for the administration of justice.

I would be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 100 (a), (b) and (d).

(Signed) Christos ZACHARAKIS
Ambassador
Permanent Representative

Annex

REPORT DATED 6 SEPTEMBER 1994 ON THE CSCE/ODIHR TRIAL OBSERVATION IN TIRANA, ALBANIA

1. The aim of the mission

The aim of this mission was to monitor and report to the Office of Democratic Institutions and Human Rights of the Conference on Security and Cooperation in Europe (CSCE/ODIHR) on the trial of five Albanian citizens of Greek origin, being charged with treason, espionage and illegal possession of arms.

Trial observations were focused on compliance with internationally accepted standards for due process of law.

On 11 August 1994 I met with the Albanian Ambassador to Poland, Professor Enver Abdyi Faja, who presented his country's explanation of the case and provided materials on the dispute with Greece on the Greek minority problem in Albania. On the other side, the Greek Embassy in Poland provided the indictment text and applicable provisions of the Albanian Penal Code of 1977 translated into English, as well as some official Greek statements on the trial.

I arrived in Tirana on 13 August and left the city on 20 August 1994. During that time I met with all the defence lawyers and with four defendants in police jail on Friday evening, 19 August. I observed all trial sessions from Monday, 15 August, when they began, to Saturday, 20 August. I made tape recordings of all my talks with participants in the events in the courtroom. I studied Albanian constitutional provisions in protection of due process of law, some related laws and a draft of the new penal code which may be adopted in the near future. Every day I studied three Albanian newspapers and watched the way in which the trial was presented on Albanian TV. Meetings were arranged with several Albanian and Greek journalists and with observers of the trial. An anticipated meeting with the prosecution failed to materialize.

While in Tirana, I was assisted by the Italian Embassy representing the Chairman-in-Office of CSCE and by the Albanian Ministry of Foreign Affairs. Both sides provided any assistance I needed.

2. Legal standards concerning the case

On 4 October 1991 Albania ratified the International Covenant on Civil and Political Rights. a/ According to article 4 of the Constitutional Law on principal constitutional provisions, adopted on 29 April 1991, "The Republic of Albania recognizes and guarantees the fundamental human rights and liberties and ethnic minorities as recognized by international documents." Article 8 of the Law says: "The legislation of the Republic of Albania takes into consideration, recognizes and respects generally accepted principles of norms on international law." There is another Albanian constitutional act, adopted on 31 March 1993, entitled "Charter of rights". It formally provides people in this country with all fundamental rights and freedoms as enumerated in the International Bill of

Human Rights. However, the Charter is not a self-executing law. At the same time, the Albanian Penal Code, adopted in June 1977 under the communist regime and slightly changed in May 1990, is still strongly authoritarian in character. This opinion is shared also by the Albanian prosecution; on the first day of the trial the prosecutor dropped the treason charge because, as he explained, "it was based on the very Stalinist provisions of the Penal Code". That code is still in force although I was told new draft penal codes are under final debate in Parliament. Given such a strongly communist judicial heritage, this and other criminal investigations and trials in Albania, according to Albania's constitutional laws and international obligations, should be carried out in agreement with articles 9 (rights of arrested and detained persons) and 14 (due process of law for a person accused of crime) of the International Covenant, despite the content of the present Penal Code procedure. Observations on this case are based therefore on Article 9 and comments on the trial, on Article 14 of the International Covenant, as well as commitments to the CSCE process; paragraph 13.9 (fair trial) of the Concluding Document of the Vienna Meeting, paragraphs 5.2 (public authorities' duty to comply with the Constitution), 5.5, 5.12, and 5.16 (way of acting of the judiciary), 5.15 and 5.17 (rights of arrested and detained persons), 5.19 (presumption of innocence) of the Copenhagen Meeting. I also took into consideration that according to paragraph 24 of the Copenhagen Meeting "Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law." Bearing in mind the subject of the most important charges in this case (treason and espionage) I referred also to chapter IV, paragraphs 30-38 of the Copenhagen Document (National minority rights).

This report focuses exclusively on those facts which, in this observer's opinion, can be recognized as substantial procedural errors in this case. It does not discuss the problem of the Albanian-Greek minority nor the general problems of the criminal justice system in Albania. There is no doubt, however, in the light of reports of independent observers and my personal experiences as a Council of Europe lecturer to Albanian jurists and police officers in April 1993 and February 1994, that in both fields conditions are much better than they were four years ago and that democratic Albanian authorities are ready to undertake further steps in this direction.

3. Names of actors in the trial

Defendants and their defence lawyers

Vagelis Papachristos (in Albanian: Vangiel Papakristo) defended by Pajrim Moxha;

Theodoros Vezians (in Albanian: Theodhorj Bezhani) defended by Kujtim Puto;

Panagiotis Martos (in Albanian: Panajot Marto) defended by Vladimir Bineri;

Kostas Kyriakou (in Albanian: Kosta Qirjako) defended by Kristaq Ngjsia;

Iraclis Syrmos (in Albanian: Irakli Sirmo) defended by Arqile Lole.

Prosecutors of the Procurators Office for the city of Tirana: Arben Qeleshi and Gane Gjokutaj.

Panel of three judges: the panel for the City Court of Tirana was chaired by Martin Deda (I did not obtain names of two other judges who conducted the trial).

4. Preliminary investigation

For obvious reasons pending trial, I did not have access to the file. Thus comments are founded on observations, studies of legal documents and talks.

When I spoke to the defendants they complained about the way their houses had been searched and of violations of their rights after they were arrested (they also raised these questions in the courtroom while giving their explanation):

- The defendants stated they were seized without warrants of arrest.

- All four defendants I talked to said they had been interrogated for 72 hours without a break. Not all police officers who asked them questions and were present during the initial examinations are listed in the judicial file. Mr. Kiriakou protested against this abuse of power by a 50-hour hunger strike.

- One defendant, Mr. Syrmos, said he had been beaten by three policemen and then examined by a medical doctor. All others told me the investigators had used speech of hatred against them.

- None of the defendants had had access to a lawyer during the early days of the preliminary investigation, they stated. The first defendant was Mr. Vezians, who is Albanian and an American citizen; after intervention of American diplomats Mr. Vezians was given a lawyer five days after his arrest. Mr. Martos wanted to have a lawyer of his own choice from the beginning of the trial. However, this did not happen until almost four months after the formal investigation had begun. Mr. Papachristos was allowed counsel only seven days before the trial began.

Defendants and their lawyers mentioned several times during court sessions that the police had refused their demand for proper legal assistance. Investigators argued that, if the defendants did not ask for a specific lawyer, it meant that they did not want counsel.

- Defendants were arrested under article 48 of the Penal Code, which refers to foreigners and stateless persons. All of them are Albanian citizens, which means that, from a formal point of view, the arrest and the initial days of detention were illegal;

- Criminal charges were not presented by any officer authorized by law to exercise judicial power. The officer responsible for the preliminary investigation never identified himself to the defendants.

All these defendants' complaints raise allegations of violation of provisions envisaged in article 9.1, 2 and 3 of the International Covenant, which guarantees the right to liberty and security of person and special rights when arrested or detained.

The prosecutors rejected all those complaints in a special statement published by the Albanian Telegraphic Agency on 18 August. They declared that "No kind of violence, either physical or psychological, has been used at any time or case against these defendants since the very beginning ...".

The above questions should, however, be considered as part of the conduct of a fair trial by the court before it reaches a verdict or then by a court of appeals. The defence lawyers did not raise any of these points, possibly because they were unfamiliar with international standards for these rules.

When the defence lawyers were asked about these complaints by their clients they replied they were familiar with them (some of them were presented by defendants in the courtroom). The lawyers, however, refused to request the court to investigate such allegations during the trial. One of the lawyers said: "Even if I asked the court to examine this information, e.g. to have policemen testify as witnesses about their behaviour during the preliminary interrogations, the court would not accept such a motion. I have been a practising lawyer for two years, but I have known our courts for 32 years as a lay judge and I am convinced that the motion would be useless." It should be added also that most of the information the defendants gave me in jail had been mentioned earlier during explanations given before the court. The prosecution understandably took a different viewpoint, denying such charges.

At the end of the preliminary investigation before preparing the indictment, defendants were refused the right to full access to the file and to make notes on it. Four volumes (about 1,200 pages) had to be "read" in half an hour. This procedural defect clearly violates due process rights envisaged in article 14.3 (a) and (c) of the International Covenant.

5. Indictment

It is difficult to understand this long meandering document as an indictment. The prosecutors were far from clear in pointing out precisely who did what, when and how; likewise, what were the motives of the individual defendants who allegedly committed deeds prohibited in the penal law? Maybe the reason for such an inadequately drafted indictment was the prosecutors' lack of experience, and unfamiliarity with internationally acceptable standards of legal drafting.

Both during the indictment and the prosecution's oral presentations a disproportionate amount of time was spent discussing the activity of Greeks and the Greek minority in Albania issues that were not part of the actual indictment. Much trial time was taken up with these issues.

The prosecution charged that the five defendants had organized a conspiracy within a legal organization. Article 13 of the Albanian Penal Code specifies that "Collaboration is the performance of a penal act by two or more persons with an agreement between them, by an organized group, by an armed band ...". The distinct impression is that these charges could be easily levied against any number of other potential defendants. The only demonstrable connection between these defendants is they are activists of the same ethnic minority. On the trial's first day the prosecutor dropped the treason charge and retained the charges of espionage (article 47 (g) of the Penal Code) and illegal possession of arms (article 224.1 of the Penal Code).

Parenthetically, the present report does not discuss the arms possession charge. The defendants did not reject that part of the accusation. However, this is a secondary issue as almost all Albanian men have a hunting weapon; this is a long-standing cultural tradition.

6. Defence lawyers

Two years ago Albania had no defence lawyers at all. This means that all independent barristers are relatively new to their profession and try to do their best. These attorneys gave the impression they did not fully understand the role of a defence lawyer. After observing them and talking to them several times it appears they did not know fully their clients' constitutional civil rights, nor were they familiar with international human rights and due process standards, nor did they understand the applicability of such standards to their clients. They do not believe they are equal in standing with the prosecution, so during the first days of the trial they did not assume an active role in support of their clients, nor did they object to questionable positions taken by the opposing party.

7. Prosecutors

During the seven days this trial was observed, the trial prosecutors rarely referred directly to the actual indictment. They did not present evidence that "the five" had created a conspiracy as a criminal group. They did not establish proof that the defendants were perpetrators of the precise deeds attributed to them. Both the written and oral arguments lacked specificity, focus and direction.

On Saturday, the prosecutors, with passive acceptance by the court, violated the rights of witnesses by asking them exactly the same question as they asked the defendants, without warning them of the subsequent legal consequences, although article 14.3 paragraph 3 (g) of the International Covenant guarantees everyone the right "not to be compelled to testify against himself or to confess guilt".

The prosecutors asked the defendants and witnesses many times about the Greek authorities' sources of financing of electoral campaigns of Albanian-Greek minority organizations. The problem is that this issue was not mentioned in the indictment as part of the criminal charge.

8. The Court

One of the judges was about 25-27 years old. It is obvious that in such a case (a treason case with possibilities of capital punishment), a judge of this age cannot be experienced enough to deal with such a grave matter.

The court appeared to be sometimes unsure about procedural matters. Three defendants were, after giving their explanations, questioned first by their own lawyers and the attorneys for the other two defendants and later by the prosecutors. This is the reverse of standard courtroom procedure; such a measure clearly favours the prosecution.

Considering the passive behaviour of the defence lawyers, the court should have responded to the too "active" examination of witnesses by the prosecutors to ensure a balanced trial. Moreover, the judicial panel's Chairman did not accept any defendants' remarks about their maltreatment during the preliminary investigation, or references to positive information about their personal histories, saying such information had "no direct connection with the indictment".

During the first days of the trial the defendants were seated too far from their counsels, which made a proper defence difficult. Later this situation was improved but direct contact between the defendants and their counsels pending trial was still technically difficult.

9. Observers

About 90-100 observers were present in the courtroom every day. There were family members, diplomats, Greek MPs, independent observers, journalists. The trial was recorded by Albanian TV. Anyone could record proceedings on a tape. Every observer had to have a pass. On the second day it was not clear if the pass for the first day was still valid or not. This was the reason the police stopped one of the Greek journalists. About 20 other Greek journalists were not permitted to observe the trial, owing to the lack of free seats in the courtroom.

10. Conditions in the police jail

Defendants did not complain about jail guards but three defendants complained of extremely small cells. I saw four such cells. One was about 3.5 m^2 and without any window, which resulted in an almost complete lack of air circulation. Two cells were even smaller (1.20 x 2.20 m) but with a very small orifice, in the wall. The poor condition of the cells cannot be considered, however, as discriminatory; the condition of other cells, I was informed, was the same.

11. Recommendations

It is difficult to make recommendations on a trial in progress, but several serious procedural flaws are already evident in the conduct of this case and are described above.

As the trial is not finished yet, the court still has adequate time to examine all alleged miscarriages of justice during the preliminary investigation and to consider them while preparing the verdict.

The alleged criminal "guilt" of the defendants should be strictly separated from the alleged political activity of legal organizations of which they are members.

An international team of medical experts should examine the defendants at the earliest possible opportunity to verify whether or not they have been maltreated during the initial stage of the preliminary investigation.

Additional legal training for Albanian lawyers should be provided, preferentially in the Czech Republic, Hungary, Poland or Slovakia, where lawyers share at least partially the same past and are at the same time among the most advanced in adopting their juridical systems to Western standards.

Notes

a/ Resolution 2200 A (xxi), annex.